

DRAFT

Category III Contract

United States Department of the Interior National Park Service

Mountaineering Guide Services

Concession Contract No. CC-MORA001-06

[Name of Concessioner]

[Address, including email address and phone number]

Doing Business As

Covering the Period

START DATE through END DATE¹

¹ The effective date of the Contract is subject to change prior to Contract award if determined necessary by the Service. This footnote is to be deleted prior to Contract execution.

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This Contract is between the National Park Service and _____ (hereinafter referred to as “Concessioner”), a [Include only one:] [Corporation] [Partnership] [Sole Proprietorship], dba _____ under the authority of 16 U.S.C. 1 et. seq., including 16 U.S.C. 5901 et seq., and other laws that supplement and amend these laws. The Director and the Concessioner agree:

SECTION 1. TERM OF CONTRACT

This Concession Contract No. MORA001-06 (“Contract”) shall be effective as of [START DATE], and shall be for a term of ten (10) years until its expiration on [END DATE].

SECTION 2. SERVICES AND OPERATIONS

(a) Required and Authorized Visitor Services

During the term of this Contract, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

- (1) Required Visitor Services. The Concessioner is required to provide the following visitor services during the term of this Contract:
 - (i) Mountaineering guide services for single and multi-day mountaineering expeditions for the public on Mount Rainier.
- (2) Authorized Visitor Services. The Concessioner is authorized to provide the following visitor services during the term of this Contract:
 - (i) Mountaineering day schools to prepare visitors for participation in a summit attempt.
 - (ii) Guided winter day use activities (cross country skiing and snowshoeing)
 - (iii) Guide winter overnight trips as outlined in the operating plan
 - (iv) Alpine training courses (search and rescue training, and snow and ice schools).
[REQUIRED FOR MORA005 AND MORA006 – AUTHORIZED FOR MORA001]

(b) Operation, Maintenance, and Quality of Operation

The Concessioner must provide, operate and maintain the Visitor Services in accordance with this Contract in a manner considered satisfactory by the Director, including the nature, type and quality of the Visitor Services. The Concessioner's authority to provide Visitor Services under the terms of this Contract is non-exclusive. The Concessioner's operations and contract compliance will be evaluated on at least an annual basis.

(c) Operating Plan

The Director will establish and revise, as necessary, after consultation with the Concessioner, specific requirements for the operations of the Concessioner under this Contract in the form of an Operating Plan. The initial Operating Plan is attached to this Contract as Exhibit B.

(d) Rates

All rates and charges to the public by the Concessioner for Visitor Services must be reasonable and appropriate and must be approved by the Director.

(e) No Capital Improvements

The Concessioner may not construct any Capital Improvements upon Area lands.

SECTION 3. CONCESSIONER PERSONNEL

- (a) The Concessioner must ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public.
- (b) The Concessioner must establish appropriate screening, hiring, training, safety, employment, termination and other policies and procedures.
- (c) The Concessioner must review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and must take such actions as are necessary to correct the situation.
- (d) The Concessioner must maintain, to the greatest extent possible, a drug free work environment.

SECTION 4. ENVIRONMENTAL

The Concessioner must utilize appropriate best management practices (practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this Contract) in its provision of Visitor Services and other activities under this Contract.

SECTION 5. FEES**(a) Franchise Fee**

- (1) The Concessioner must pay a franchise fee to the Director as follows: (To be inserted in the final contract)
- (2) The Concessioner has no right to waiver of the fee under any circumstances.

(b) Payments Due

- (1) The franchise fee is due on a monthly basis at the end of each month and must be paid by the Concessioner in such a manner that the Director will receive payment within fifteen (15) days after the last day of each month that the Concessioner operates.
- (2) All franchise fee payments consisting of \$10,000 or more, will be deposited electronically by the Concessioner in the manner directed by the Director.

- (3) The Concessioner must pay any additional fee amounts due at the end at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments will be offset against the following year's fees. In the event of termination or expiration of this Contract, overpayments will first be offset against any amounts due and owing the Government, and the remainder will be paid to the Concessioner.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

SECTION 6. INSURANCE

The Concessioner must obtain and maintain during the entire term of this Contract at its sole cost and expense, coverage necessary to fulfill the obligations of this Contract. The insurance requirements are set forth in Exhibit D.

SECTION 7. RECORDS AND REPORTS

(a) Accounting System

- (1) The Concessioner must maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system must be capable of providing the information required by this Contract. The Concessioner's system of accounts classification must be directly related to the Concessioner Annual Financial Report Form issued by the Director.
- (2) If the Concessioner's annual gross receipts are \$500,000 or more, the Concessioner must use the accrual accounting method.
- (3) The Concessioner must keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this Contract by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

- (1) The Concessioner must submit annually as soon as possible but not later than 90 days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").
- (2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements must be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.
- (3) If annual gross receipts are between \$500,000, and \$1,000,000, the financial statements must be reviewed by an independent Certified Public Accountant in accordance with Generally

Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

- (4) If annual gross receipts are less than \$500,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Reports

- (1) Balance Sheet. If requested by the Director, within ninety (90) days of the execution of this Contract or its effective date, whichever is later, the Concessioner must submit to the Director a balance sheet as of the beginning date of the term of this Contract. The balance sheet must be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant.
- (2) The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under this Contract or otherwise, including, but not limited to, operational information.

SECTION 8. SUSPENSION, TERMINATION, OR EXPIRATION

(a) Termination and Suspension

- (1) The Director may temporarily suspend operations under this Contract in whole or in part or terminate this Contract in writing at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit Visitor Services in the Area to those that continue to be necessary and appropriate.
- (2) The Director may terminate this Contract if the Director determines that the Concessioner has materially breached any requirement of this Contract.
- (3) In the event of a breach of the Contract, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the Contract for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the Contract for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature will be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 8(a).

(b) Requirements in the Event of Suspension, Termination or Expiration

- (1) In the event of suspension or termination of this Contract for any reason or expiration of this Contract, no compensation of any nature will be due the Concessioner, including, but not limited to, compensation for personal property, or for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

- (2) Upon termination of this Contract for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner must, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, and repair any injury caused by removal of the property. This removal must occur within thirty (30) days (unless the Director in particular circumstances otherwise determines).
- (3) Personal property not removed from the Area will be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner.

SECTION 9. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS

This Contract may not be assigned [e.g. sold] or encumbered [e.g. mortgaged] without the approval of the Director in accordance with 36 CFR Part 51 with respect to proposed assignments and encumbrances.

SECTION 10. GENERAL PROVISIONS – See Addendum 1.

Addendum 1 attached to this Contract is made a part of this Contract.

By:

CONCESSIONER:

UNITED STATES OF AMERICA

(Title), (Company Name)

Regional Director, Pacific West Region, National Park Service

Date: _____

Date: _____

[Corporation]

Attest

By: _____

Title: _____

[Partnership]

Attest

By: _____

Title: _____

[Sole Proprietorship]

Attest

By: _____

Title: _____

Attachments:

Addendum 1 – General Provisions

Exhibit A – Nondiscrimination

Exhibit B – Operating Plan

Exhibit C – Assigned Government Personal Property

Exhibit D – Insurance